United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

76-2142

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 76-2142

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. JAMES WILLIAM ALLEN, Defendant-Appellant.	Appeal From The United States District Court For The Northern District Of New York Albany Division The Honorable James T. Foley, C.J.

****

APPELLANT'S BRIEF + Appendix

B
P/S

JAMES WILLIAM ALLEN,
Appellant, pro se
Post Office Box 1000-71027
Leavenworth, Kansas 66048

NO ORAL ARGUMENT.

QUESTION PRESENTED FOR REVIEW.

Where the trial court has imposed sentence under the provisions of 18 USC 4208 (a) (2), and the United States Parole Commission denies parole with stereotyped, mathematical and mechanical "excuses" which are incomprehensible to men of ordinary intelligence and does not provide any significant or meaningful criteria by means of which the prisoner can improve or enhance his rehabilitation to qualify for parole, has the execution of the sentence been so impermissibly impaired as to constitute a violation of Due Process and, if so, does the trial court have jurisdiction to fashion a post-conviction remedy for redress of grievances?

TABLE OF CONTENTS.

APPELLANT'S BRIEF.

Statement of the Case.

This is an appeal from the Order entered on or about October 7, 1976, by the Honorable JAMES T. FOLEY, United States District Judge, for the Northern District of New York, Albany Division, denying the Appellant's motion filed under 28 USC 2255.

Statement of the Facts.

On or about August 31, 1970, the Appellant was sentenced to concurrent terms of 20 years upon his guilty plea to various counts in multiple indictments charging two bank robberies and crimes involving stolen motor vehicles.

On or about October 7, 1976, the court below entered a Memorandum-Decision and Order (Appendix A, post page 7) denying the Appellant's post conviction motion in which he contended that he was inside the protection of the federal laws and that the action of the United States Parole Commission had denied him due process of law; that the sentencing court was unaware of the practices of the Parole Board with regard to

sentences imposed under the provisions of 4208 (a) (2). (Appendix B, post page 8). The Appellant contended that the case was one where the parole board had acted upon erroneous information and that the Board give insufficient reasons for denial of parole. The Appellant requested a resentencing under the provisions of 28 USC 2255.

The court below indicated that it was not the intent of the Judge to convey to the Board of Parole any suggestions as to the appropriate time for release. The court below stated in effect that the Parole decision was left entirely in the hands of the Board and that the Court would not intervene. (Appendix A, post page 7)

Timely notice of appeal was filed and the Appellant was notified that his Brief must be filed in this Court of Appeals on or before January 31, 1977. This Brief was mailed to the Clerk of this Court well within the time limit imposed, and sent CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

ISSUE PRESENTED FOR REVIEW.

That it constitutes a denial of Due Process and the Court below had valid jurisdiction to grant post conviction relief, where the United States Parole Commission refused to grant parole and gave "excuses" which are stereotyped, mathematical andmechanical, being incomprehensible to men of ordinary intelligence and did not provide any significant or meanginful criteria by means of which the prisoner or the court would be provided with information to improve or enhance his rehabilitation to qualify for parole the second time around.

The first issue to settle is one of jurisdiction. It has been held that the sentencing court has jurisdiction under 28 USC 2255 where there is an allegation that the Parole Board has acted, or not acted, in a manner concurrent with Due Process. It has been held that the trial court is the proper forum. Robinson v. Parole Board, 403 F. Supp. 638 (N.Y. 1975)

ARGUMENT.

Due Process requires that a prisoner who has been denied parole be given a Statement of reasons sufficient to enable him and/or the reviewing Court to determine whether parole has been denied for impermissible reasons, or for no reasons at all. The Statement must be based upon consideration of all relevant factors and must furnish the prisoner both the grounds for the decision and the essential facts upon which the Board's inferences are based. U.S.Const. Amend. 14, See also 5 USC 553 (E)

Appellant's appeal is predicated upon the rulings in United States ex rel. Johnson v. Chairman of Board of Parole, 500 F. 2d 925 (2 Cir., 1974); Mower v. Britton, 504 F. 2d 396 (10 Cir., 1975); King v. United States, 492 F. 2d 1337 (7 Cir., 1974). The court in Johnson, supra, stated in part:

> "The failure to give reasons for denial of parole constitutes a constitutional violation with regard to the process that is due in this situation. We agree with the opinion of the Court in King, supra, that a substantial argument can be made that some modicum of due process should ascend the denial of the expectation of freedom on parole inasmuch as its determination after having been granted inflicts a 'grievous loss' of a 'valuable liberty'. . . Morrissey v. Brewer, 408 U.S. 471 . . . "

Additionally, the "excuses" given as the basis for denial of parole are so incomprehensible as to amount to no valid reasons for denial of parole. Therefore, the Appellant presents as well a statutory violation by the Parole Board. Adm. Procedure Act. 5 USC 551-559, herein after the ACT. It is clear that under the provisions of the ACT the United States Parole Commission is an "Agency".... having the power to promulgate an Order. 5USC (12). An Order means the whole or part of a final disposition . . . in the matter of rule making . . . (5 USC 551 (7)). Thus, a decision to grant or deny parole is an "adjudication" within the meaning of the ACT. 5 USC 551 (6).

It is the position of the Appellant that the reasons (sic) given by the Parole Commission for parole denial are couched ~~in~~ in such arcane and cryptic language as to be meaningless and incomprehensible to men of ordinary intelligence, for example:

> "Your offense behavior has been rated as greatest severity. You have a salient factor score of 4. You have been in custody a total of 66 months. Guidelines established by the Board for adult cases which consider the above factors indicate a range of 55+ months to be served before release. Your release at this time would depreciate the seriousness of the offense committed and thus is incompatible with the welfare of society."

(See Appendix C, post page 9)

The Appellant does not contend that the Parole Board has to give him a parole. What he urges is that the Parole Commission is required as a matter of Due Process and within the limits of the ACT to provide him and the court with a rational and sufficient guideline foundation as in which areas the Board finds him deficient and in which manner he should be directed to make needed corrections and rehabilitation, academic, vocational, spiritual, in order to meet the standards in order to qualify for parole the second time around.

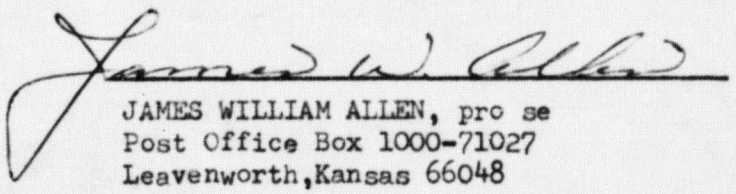
Since the Parole Commission has failed and refused to grant this Appellant fundamental Due Process, then, it is respectfully

submitted that he has been denied a basic Constitutional right. He contends that the 'execution' of the sentence has been so impermissibly impaired that he is entitled to post-conviction relief under 28 USC 2255, as a measure of Due Process. U.S. Const. Amend. V, XIV.

CONCLUSION.

WHEREFORE, in the light of the cases and authority cited, the Appellant Prays that this Court of Appeals will reverse and remand the cause for further proceedings.

Respectfully submitted,

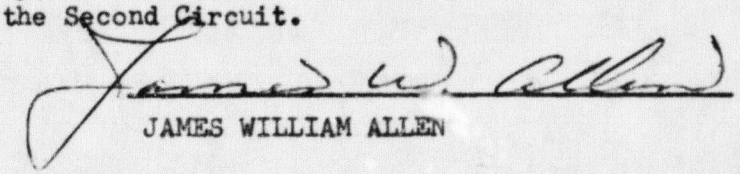


JAMES WILLIAM ALLEN, pro se
Post Office Box 1000-71027
Leavenworth, Kansas 66048

DEC 14, 1976

CERTIFICATE OF SERVICE.

The undersigned hereby Certifies that on this the 14th day of December, 1976, a true and correct copy of this Appellant's Brief was served by U.S. Mail, CERTIFIED, RECEIPT REQUESTED, upon the United States Attorney, Albany, New York, and 8 copies upon the Clerk of this Court of Appeals for the Second Circuit.



JAMES WILLIAM ALLEN

76-2142

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee,	)	
vs.	)	APPEAL No. 76 - 2142
JAMES WILLIAM ALLEN, Appellant.	)	

APPENDIX.

Pages 7, 8 and 9.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAMES WILLIAM ALLEN,

Petitioner, 76-CV-

-against- (69-CR-145 ND NY)
(70-CR-84 MD PA)
UNITED STATES OF AMERICA, (70-CR-98 SD FLA)

Respondent(s).

JAMES T. FOLEY, D.J.

MEMORANDUM-DECISION and ORDER

The petitioner was sentenced by me on August 31, 1970, to concurrent sentences on his plea of guilty to counts in three separate indictments with the maximum imposed to be a sentence of twenty years. The counts pleaded to charged two bank robberies and twenty-seven counts of an indictment found in the Southern District of Florida charging conspiracy and transportation and sale of stolen motor vehicles.

The petitioner files a substantial typewritten motion to vacate the sentences under 28 U.S.C. §2255. My file shows that by letter to petitioner, dated February 22, 1971, I denied his request for reduction of the sentences imposed. The present motion requests a modification of the sentences by their reduction. The contention is that at the time of the sentencing the court was unaware of the practices of the United States Parole Board in regard to 4208(a)(2) sentences. The petitioner cites Robinson v. United States Board of Parole, 403 F. Supp. 638 (W.D.N.Y. 1975) in support of his right to make his 2255 application to this District Court that sentenced instead of a district court in the district wherein

to 4208(a)(2) sentences. The petitioner cites Robinson v. United States Board of Parole, 403 F. Supp. 638 (W.D.N.Y. 1975) in support of his right to make his 2255 application to this District Court that sentenced instead of a district court in the district wherein confined. The differences noted are that in Robinson it was a suit to review a decision of the Board of Parole, and was a situation where erroneous information was forwarded to the Board regarding the offense for which convicted, and the Board gave insufficient reasons for denial of parole. The petitioner also cites United

APPENDIX A (7)

States v. Slutsky, 514 F.2d 1222 (2d Cir. 1975). The ruling there to remand for resentencing was based upon the finding that it was not clear parole considerations were in accord with the reasonable expectation of the judge when he used Title 18 U.S.C. §4208(a)(2) sentence.

In this instance in my letter of February 22, 1971, denying his request for reduction of sentence, I stated that the sentences imposed were "in the range of being lenient". After another review of the presentence report, that judgment is reinforced. It was not my intent at the time of sentencing by imposing the sentences under 4208(a)(2) to convey to the Board of Parole any suggestion as to the appropriate time for release on parole. It was my intention to give the petitioner/defendant the advantage of being considered for such release before one-third of the sentence because of the length of the maximum sentence, 20 years. In no way was there any thought in my mind other than to leave the decision for parole release completely for the determination of the Board of Parole. The Board of Parole in my judgment has given sufficient reasons for the denial of parole and deferral of another appearance before the Board of Parole in April 1977. I find no need for an evidentiary hearing.

The motion to vacate the sentence under 28 U.S.C. §2255 is denied and dismissed. The motion and accompanying papers shall be filed by the Clerk without payment of filing fee if such is necessary.

It is so Ordered.

Dated: October 7, 1976
Albany, New York

James T. Foley
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAMES WILLIAM ALLEN,
Petitioner,

Vs.

UNITED STATES OF AMERICA
Respondant(s).

No. 69-CR-145

Motion to Vacate Sentence Pursuant to the Provisions of Title 28, Section 2255, U.S.C.A.

JURISDICTION IN CAUSE

The Honorable J. T. Foley, in the Interest of Justice has Jurisdiction to modify petitioner sentence notwithstanding the Provisions of Rule 35, Federal Rules of Criminal Procedure.

The Authority for modification of sentence after one-hundred twenty (120) days is made possible under Rule 45(c) Federal Rules and Procedure and more specifically in:

U.S. vs. MURRAY, 275, U.S. 374
U.S. vs. SLUTSKY, 514, F 2d, 1222 (1975)
KORTNESS vs. PAROLE BOARD, 514, F 2d, 167 (1975)

AUTHORITIES CITED IN SUPPORT

GRASSO v. NORTON, 376, F. Supp. 119
UNITED STATES v. BOYLE, 348, F. 2d, 715
UNITED STATES v. HENDRIX, 505, F. 2d, 1233
PICKUS v. PAROLE BOARD, 509, F. 2d
MITCHELL v. PAROLE BOARD, Eastern Missouri D.C.
RANDLE v. PAROLE BOARD, Northern Illinois D.C.
BILLITERI v. PAROLE BOARD, 385, F. Supp.
GRAHAM v. UNITED STATES, U.S. 403, S.Ct. 1848
JOHNSON v. PAROLE BOARD, 500, F. 2d, 926
HARRISON v. PACE, 357, F. Supp.
CANDARINI v. PAROLE BOARD, 369, F. Supp.
GARAFOLA v. PAROLE BOARD, 505, F. 2d, 1214

ISSUES PRESENTED

COURTS AND 268 (1)

AUTHORITIES CITED IN SUPPORT

GRASSO v. NORTON, 376, F. Supp. 119

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MITCHELL v. PAROLE BOARD, Eastern Missouri D.C.

RANDLE v. PAROLE BOARD, Northern Illinois D.C.

BILLITERI v. PAROLE BOARD, 385, F. Supp.

GRAHAM v. UNITED STATES, U.S. 403, S.Ct. 1848

JOHNSON v. PAROLE BOARD, 500, F. 2d, 926

HARRISON v. PACE, 357, F. Supp.

CANDARINI v. PAROLE BOARD, 369, F. Supp.

GARAFOLA v. PAROLE BOARD, 505, F. 2d, 1214

ISSUES PRESENTED

COURTS AND 268 (1)

I

JUDICIAL EXAMINATION OF THE ACTION OF THE PAROLE BOARD TO DETERMINE WHETHER OR NOT THERE HAS BEEN AN ABUSE OF DISCRETION IS PROPER WHEN THE PLAINTIFF, BEFORE HIS INCARCERATION, RESIDED IN THE DISTRICT IN WHICH HE SEEKS RELIEF.....

ROBINSON v. PAROLE BOARD, 403 F, Supp. 638

APPENDIX B (8)

ISSUES PRESENTED, cont'd

II

PAROLE BOARD MUST PROVIDE INMATE WITH REASONS FOR DENIAL OF PAROLE, AND THIS REQUIREMENT CANNOT BE MET BY MERE CONCLUSARY STATEMENTS WITH NO INDICATION OF FACTUAL DETERMINATION FOR THOSE CONCLUSIONS.....

ROBINSON, SUPRA

III

WHERE THE FEDERAL GOVERNMENT HAVE MADE PAROLE AN INTEGRAL PART OF THE PENALOGICAL SYSTEM, THE AUTHORITY TO DENY PAROLE TO PRISONERS SENTENCED UNDER SECTION 4208(a)(2) CANNOT BE ARBITRARILY AND CAPRICIOUSLY DENIED OR EXERCISED.

STATEMENT OF FACTS

Petitioner was informed by the United States Parole Board after appearing the last time: "Your offense behavior has been rated as greatest severity because of multiple offenses. You have a salient factor score of 4. You have been in custody a total of 79 months. Guidelines established by the Commission for adult cases which consider the above factors indicate a range of 55+ months to be served before release for cases with good institutional program performance and adjustment. After review of all relevant factors and information presented, it is found that your release at this time would depreciate the seriousness of your offense behavior and thus is not compatible with the welfare of society. Commission guidelines for greatest severity cases do not specify a maximum limit. Therefore, the decision in your case has been based in part upon a comparison of the relative severity of your offense behavior with offense behaviors (and time ranges specified) in the very high severity category."....

ARGUMENTS POINTS AND AUTHORITIES

Petitioner, bases his Motion to Reduce, notwithstanding that more than One-Hundred Twenty (120) days have elapsed since sentencing date, on this Court's lack of awareness at the time of sentencing of The Practices of The United States Parole Board. In support of this contention Petitioner relies upon several recent District and Appellate Court decisions:

U.S. vs. SLUTSKY, 514, F 2d, 1222 (2nd 1975)

KORTNESS vs. PAROLE BOARD, 514, F 2d, 167 (8th 1975)

ROBINSON vs. PAROLE BOARD, 403, F Supp 638 (1975)

U.S. vs. MURRAY, 275, U.S. 374

In Slutsky, the prisoner timely moved for a reduction of sentence, which was denied by the District Court without a hearing. The Second Circuit vacated the sentence and remanded the case to the District Court for re-sentencing.....

The Court noted that ordinarily the disposition of sentences was the discretion of the sentencing Judge.

In Slutsky, the prisoner timely moved for a reduction of sentence, which was denied by the District Court without a hearing. The Second Circuit vacated the sentence and remanded the case to the District Court for re-sentencing.....

The Court noted that ordinarily the disposition of sentences was the discretion of the sentencing Judge.

This discretion, however, is subject to Appellate relief where the sentence is a product of a mistake or fact. In that case, the mistake consisted in the District Court's lack of awareness of the Parole Considerations which would be afforded the Prisoner under Section 4208(a)(2).

In formulating a Judge's view of 42 8(a)(2) prior to publication of Parole Guidelines, the Second Circuit said:

> for the narrow purpose of this case, we need only determine whether the procedures are consistent with what we assume were the reasonable expectations of the sentencing Judge....
> We conclude they are not.....
>
> And in the reading Section 4208(a)(2) in conjunction with section 4204, we would have expected the Board of Paroles to give meaningful consideration to the parole at some point before the one-third point in the sentence when the prisoner would have it anyway.

The 8th Circuit in KORTNESS, supra, held the Sentencing Court under Special Circumstances of that case has continuing Authority and Jurisdiction under 18 USC 4208(a)(2) to modify sentence at any time during the period of sentence being imposed, if the Court concludes that its intentions have not been complied with by the Parole Board.

Petitioner possessed a salient factor score of 5, which qualified petitioner for release according to the Board Guidelines between 26-32 months. Petitioner had served 28 months when the Board decided to continue Petitioner's case until December 1976, 43 months before serious consideration would be taken, "If Then".

In the instant cause, a Petitioner with a salient factor score of "zero" would not have to serve more than 55+ months for the same offense that the Petitioner is charged with if the Board followed its guidelines 92° and 94° as the Board so eloquently claims in the United States Court.

GRASSO v. NORTON, 376, Supp. 119
GARAFOLA v. PAROLE BOARD, 505, F 2d, 1214

In BILLITERI v. PAROLE BOARD, 385 Supp. 1217, the Court examined the basis for reviewing decisions of the Board and concluded that "Judicial examination of the action of the Board to determine whether or notthere has been an abuse of discretion", is proper when before incarceration, the petitioner resided in the District where he seeks relief; see also, HARRISON v. FACE, 357, F. Supp. 354.

In ROBINSON v. PAROLE BOARD, 403, Supp 640, the Court relying in BILLITERI, Supra, concluded that the Board must provide Prisoners with reasons for denial of his parole:

JOHNSON v. PAROLE BOARD, 550, F 2d (moot)
REGAN v. JOHNSON, 419, U.S. S.Ct. 488
CHILDS v. UNITED STATES, 511, F 2d 1270
UNITED STATES v. STEWART, 478, F 2d, 106
LUPO v. NORTON, 371, Supp. 156
CAMPARINI v. ATTORNEY GENERAL, 369, Supp 1132

his parole.

JOHNSON v. PAROLE BOARD, 550, F 2d (moot)

REGAN v. JOHNSON, 419, U.S. S.Ct. 488

CHILDS v. UNITED STATES, 511, F 2d 1270

UNITED STATES v. STEWART, 478, F 2d, 106

LUPO v. NORTON, 371, Supp. 156

CANDARINI v. ATTORNEY GENERAL, 369, Supp 1132

SEE EXHIBITS 1, 2, 3, 4 ATTACHED.

A Petitioner with a salient factor score of "zero" could not be required to serve more than 55+ months, yet Petitioner having served 79 months under similar circumstances with a 4 rating is not even accorded the same considerations for parole that 4202 now (a)(2) Prisoners are accorded.....

> Certainly a sentencing Court could not consider a punishment outside the Statutory maximum.

U.S. v. DOYLE, 348, F 2d, 715

U.S. v. HENDRIX, 505, F 2d, 1233

Yet in the Board's view, it is within its discretion to Virtually do so.

Based upon the manner in the actions of the Board's approaching this Petitioner's Case and other Prisoners sentenced under Section(4208)(a)(2), it would appear that the Parole Board has substituted its own guidelines for the Judgment of the Sentencing Court

As pointed out by the 7th Circuit in GARAFOLA, Supra, the results of the Parole Boards guidelines is substantially to Eliminate both Early Parole Consideration contemplated by 4208(a)(2) and the Parole Consideration upon completion of one-third of the sentence if at that date the Prisoner's incarceration has not been long enough to bring him within the Guideline Range.....

These guidelines were published for the first time in the Federal Register on November 19, 1973, Invalidated by D.C. Circuit Court;

PICKUS v. PAROLE BOARD, 507, F 2d, (1974)

reissued as emergency regulations under 5 U.S.C. & 553(b)3(B), 39 F.R. 45223....

In recent months several Judges on both the District and Appellate level have had to reconsider and reduce sentences because of the Parole Board's flat disregard for prisoners sentenced under Section 4208(a)(2):

KORTNESS v. U.S., 514, F 2d (8th Cir)

MITCHELL v. U.S., Eastern District Missouri

SLUTSKY v. U.S., 17 F 2d CR 2122(A)

RANDLE v. U.S., Northern Illinois D.C.

BILLITERI v. U.S., 385, F. Supp

Judge Frank McGarr of Eastern Illinois released eighteen (18) prisoners at one time because of the Parole Board's current arbitrary policy.

Judge Richard Truman has held the Parole Board in Contempt and ordered the Atlanta Prison Officials to send records of all prisoners eligible for parole to the Court.

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UNITED STATES v. MITCHELL, U.S.D.C. 71 CR 7(2)(Oct. 30, 1975) is a ruling case in the instant motion as well as all the above presented.

The Parole Board has assumed an authority that is superior to The United States District Courts and at the same time denies Prisoners The Procedural Safeguards GUARANTEED by the United States Constitution and enforced by The United States Court.

The Parole Board has said in essence to this Petitioner: The Court should not have sentenced you under Section 4208(a)(2); you have been in and out of trouble; the Court should not have sentenced you under Section 4208(a)(2); you have 79 months served and the Board requires ????? months, but since the Court sentenced you under this Section and the Board finds that the Court was in error for giving said Section to a Prisoner that the Board finds unworthy of such leniency or consideration, the Board shall ignore the Court's sentence and any effort you advance toward rehabilitation

Defendant is a Layman and does not profess to know what consists of constitutional requirements of fair treatment under the Due Process Clause of the Fifth Amendment of the U.S. Constitution; but, like the late Justice Hughes said: "even a Dog can distinguish between being stumbled over and being kicked".....

In United States ex rel. JOHNSON v. CHAIRMAN, NEW YORK PAROLE BOARD, Supra, 500 F. 2d 926, the Court so decided agreeing with the District Court that as a minimum safeguard against arbitrary action, The Due Process Caluse of the 14th Amendment required the Parole Board to state the reasons (for denial of parole) ...., referring to MARRISSEY, Judge Mansfield stated:

> "Parole was henceforth to be treated as a "Conditional Liberty", representing an "interest" entitled to due process protection...
> A Prisoner's interest in Prospective Parole, or "Conditional Entitlement" must be treated in like fashinn. To hold otherwise would be to create a distinction too gossamer thin to stand close analysis....
> Whether the immediate cause be release or revocation, the stakes are the same:
>
> CONDITIONAL FREEDOM vs. INCARCERATION....."

Additional decisions holding that Due Process attaches to Parole Release Hearings are:

> HARRISON v. PACE, 357, F Supp
>
> CANDARINI v. ATTORNEY GENERAL, 369, F. Supp.
>
> The Board's Parole Release decisions determine the fate of the inmate. He may be released to The Community in a State of Conditional Freedom or he may continue to serve his sentence within the institution. On theone hand he is free while on the other he must suffer all the deprivations and penalties of the Federal Prison. To the inmate, a negative decision from the Board surely condemns him to suffer a greivous loss....
> The inmates interest in Conditional Liberty requires that minimum due process attach.

SEE: EXHIBITS 1,2,3,4 ATTACHED.

Petitioner is currently forced to wait until April 1977, before being considered for another Board appearance and it is no Lead Pipe Cinch that Petitioner will be granted parole at this Late Date based on the capricious and arbitrary manner the Board is currently treating Prisoners sentenced under Section 4208(a)(2).

It shoud be Judicially noted by This Honorable Court that the Basis for the Board's arbitrary action against your Petitioner is predicated upon facts fully known to this Honorable Court when Petitioner was accorded the sentence under Section 4208(a)(2).

Petitioner is currently forced to wait until April 1977, before being considered for another Board appearance and it is no Lead Pipe Cinch that Petitioner will be granted parole at this Late Date based on the capricious and arbitrary manner the Board is currently treating Prisoners sentenced under Section 4208(a)(2).

It shoud be Judicially noted by This Honorable Court that the Basis for the Board's arbitrary action against your Petitioner is predicated upon facts fully known to this Honorable Court when Petitioner was accorded the sentence under Section 4208(a)(2).

SLUTSKY, Supra and KORTNESS, Supra suggests that the question of whether or not a sentencing Judge has Jurisdiction to reduce a sentence turns upon whether or not the Judge was aware of the Board's Policy with respect to (a)(2) Prisoners at the time of sentencing. If not, under KORTNESS, rationales, the sentencing Judge has continuing authority to modify the Prisoner's sentence.

PRAYER

The Parole Board action against Petitioner being arbitrarily, illegal, and in complete disregard for Defendant's rehabilitative efforts and this Honorable Court's sentence under 4208(a)(2), Petitioner prays that this Honorable Court will reduce Petitioner's sentence to Time Served in the "Spirit of The Law" since the Board has proven by its action that the Board has no desire, ambition, or intention of following the Law of the Courts or theBoard's own guidelines.

CONCLUSION

Petitioner concludes with all allegations stated prior in this his Petition.

RESPECTFULLY SUBMITTED

James W. Allen

JAMES WILLIAM ALLEN, Pro Se
Reg. No. 71027
P.O. BOX 1000
LEAVENWORTH, KANSAS 66048

STATE OF KANSAS)
) SS.
COUNTY OF LEAVENWORTH)

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS
THE 29 DAY OF Sept. 1976.

CASE MANAGER, U.S.P.
LEAVENWORTH, KANSAS

cc: United States Attorney
Albany, New York

Parole Form H-7(a)
(Rev. June 1974)

UNITED STATES DEPARTMENT OF JUSTICE
United States Board of Parole
Washington, D.C. 20537

Exhibit (3)

Notice of Action

Name James William Allen

Register Number 71027-158 *Institution* Leavenworth

In the case of the above-named, the Board has carefully examined all the information at its disposal and the following action with regard to parole, parole status, or mandatory release was ordered:

Continue for an institutional review hearing in April 1977 with review on the record at one-third of sentence.

Conditions or remarks:

Reasons for denial, continuance or revocation: (Use separate sheet if necessary)

Your offense behavior has been rated as greatest severity. You have a salient factor score of 4. You have been in custody a total of 66 months. Guidelines established by the Board for adult cases which consider the above factors indicate a range of 55+ months to be served before release. Your release at this time would depreciate the seriousness of the offense committed and thus is incompatible with the welfare of society.

Appeals procedure: You have a right to appeal a decision as shown below. Forms for that purpose may be obtained from your caseworker, and must be filed with the Chief, Classification and Parole, (or his equivalent) within thirty days of the date this Notice was sent.

A. Decision of a Hearing Examiner Panel. Appeal may be made to the Regional Director.

B. Decision of the National Appellate Board referred to it for reconsideration. Appeal may be made to the Regional Director.

C. Decision of the Regional Director. Appeal may be made to the National Appellate Board.

D. Decision of Regional Directors in cases where they assumed original jurisdiction. Appeal may be made to the National Appellate Board.

May 2, 1975
(Date Notice sent)

North Central
(Region - Specify)

C. Hubbard
(Docket Clerk)

National Appellate Board (Check)

INMATE COPY

APPENDIX C (9)